Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	FCC 96J-3
	)	

To: The Commission

COMMENTS OF CELPAGE, INC.

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TABLE OF CONTENTS

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COMMENTS OF CELPAGE, INC.

Celpage, Inc., by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Recommended Decision of the Universal Service Federal-State Joint Board ("Recommended Decision") in the above-captioned proceeding.[1]

I. Statement of Interest

Celpage is the parent company of Pan Am License Holdings, Inc., a Private Carrier Paging ("PCP") and Radio Common Carrier ("RCC") licensee with facilities throughout the Commonwealth of Puerto Rico and the United States Virgin Islands.[2] Celpage exclusively provides one-way paging services through a wide-area paging network which is connected to the local telephone network. Celpage, like all CMRS providers, has many competitors for local wireless services in which privately owned and publicly owned CMRS companies (cellular, paging, SMRS and soon PCS services), all compete for a finite customer base.

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[1] The comment deadline in this proceeding was extended to December 19, 1996.

[2] With the implementation of Sections 3(n) and 332 of the Communications Act in the CMRS Second Report and Order, 9 FCC Rcd 1411 (1994), PCP and RCC paging services were reclassified as commercial mobile radio services ("CMRS").

Celpage is well-qualified to comment on the proposals contained in the Recommended Decision since it is a provider of one-way signaling services under both Parts 22 and 90, and will be adversely affected by the Universal Service Federal-State Joint Board's ("Joint Board") recommendations on the administration of universal service. Therefore, Celpage has standing as a party in interest in this proceeding.

II. Summary of Comments

The Recommended Decision proposed that Section 254 of the Telecommunications Act of 1996 ("the Telecom Act"), 47 U.S.C. § 254, which sets out provisions for the furtherance of universal service, be interpreted to require CMRS providers to contribute to Federal and State universal service funds. However, since CMRS providers are precluded from receiving any universal service support due to the limited definition of an eligible carrier recommended by the Joint Board, requiring CMRS providers to pay a universal service fee amounts to an unlawful tax in violation of their constitutional rights. In addition, requiring CMRS providers to contribute to a fund that will not benefit them, places illegal and discriminatory regulations, financial burdens and anti-competitive encumbrances upon CMRS providers. Therefore, until such time as CMRS providers will be technically able to benefit from the universal service support mechanisms, the FCC should declare that CMRS providers are an exempt group of carriers.

The Recommended Decision also purports that States can require CMRS providers to contribute to State universal service mechanisms. Pursuant to Section 332(c)(3) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 332 (c)(3), however, States are precluded from imposing any type of rate or entry regulation on CMRS providers. Because

the CMRS industry is operating at market capacity, any fee imposed by the States on CMRS providers will proportionally affect CMRS rates and entry. This is in violation of the Act, contrary to Congressional intent, and anti-competitive. Therefore, the FCC should apply the letter and spirit of Section 332(c)(3) of the Act, and preempt State universal service regulation for CMRS until such time as CMRS becomes a legitimate substitute for landline telephone exchange service.

III. Requiring CMRS Operators to Contribute to Universal Service Mechanisms Violates Their Constitutional Rights.

Pursuant to Section 214(e)(1) of the Act, 47 U.S.C. § 214(e)(1), the Joint Board recommended that only carriers that provide all of the services within the definition of universal service be eligible to receive support. Recommended Decision at ¶ 5. The Joint Board recommended that this definition of supportable services include all of the following: "voice grade access to the public switch network, with the ability to place and receive calls; touch-tone or dual-tone multi-frequency signaling (DTMF) or its functional equivalent; single-party service; access to emergency services; access to operator service; access to interexchange services; and access to directory assistance." Recommended Decision at ¶ 4. The Joint Board also recommended that eligible carriers receive support for toll blocking and limitation services for low income consumers, access to enhanced 911, service to the initial primary residence connection, and service to single-connection businesses. Id.

Celpage and all other CMRS carriers in the paging industry will not be able to partake in any of the universal service support mechanisms since they are technically unable to provide all of these services. Since telecommunications companies are eligible to receive universal

service funds *only* if that carrier offers *all* the services supported by the universal service program, under the Joint Board's definition, only incumbent LECs (and perhaps competitive LECs in some parts of the country) will be eligible to immediately receive universal service support, since they are the only companies providing all of the supportable services. Moreover, due to the inherent nature of one-way signalling services, it is unlikely that paging carriers will ever qualify for universal service support payments, unless the Joint Board changes the definition of eligible entities.

The Joint Board's recommendation discriminates against paging companies, since paging companies cannot technically provide the services supported by the universal service program. In effect, paging companies will be forced to pay substantial sums of "universal service" fees each year, only to support the LEC's provision of services; however, paging companies will never qualify to receive any funds from the universal service program. This is a discriminatory and unjustified tax directed against paging carriers. This taxation without compensation is an unconstitutional violation of paging carrier's due process and equal protection rights.

It is fundamental that for a tax to be Constitutional, a compensating benefit must be returned to the taxpayer from the taxing authority. See, Dane v. Jackson, 256 U.S. 589 (1921); Wisconsin v. J.C. Penny Co., 311 U.S. 435 (1940); and Morton Salt Co. v. City of South Hutchinson, 159 F.2d 897 (10th Cir. 1947). In addition, "if the taxing power be in no position to render services or otherwise to benefit the person or property taxed, . . . the taxation of such property . . . partakes rather of the nature of an extortion than a tax, and has been repeatedly held . . . to be beyond the power of the legislature and a taking of property without due process of

law." Union Refrigerator Transit Co. V. Kentucky, 199 U.S. 194, 202 (1905). The Supreme Court has also held that if a tax "results in . . . flagrant and palpable inequity between the burden imposed and the benefit received as to amount to the arbitrary taking of property without compensation," it violates the due process guaranty under the Fourteenth Amendment. Dane v. Jackson, 156 U.S. at 597.

The Fourteenth Amendment of the U.S. Constitution "does not require that the taxpayer receive a sound bargain or strict *quid pro quo* in services provided for taxes paid; but, it does prohibit the imposition of a tax when no benefits whatsoever are returned to the taxpayer or when the benefits returned are negligible." Myles Salt Co., 239 U.S. 478, 485, (1916). The U.S. Supreme Court further stated that taxing power cannot be arbitrarily exerted, imposing a burden without a compensating advantage of some kind. Id.

The Joint Board's recommendations would violate these Constitutional requirements. Paging companies will receive no benefit whatsoever from this universal service tax. One-way paging operators, such as Celpage, do not have the technological capability to originate or transport calls. Rather, paging companies pay substantial fees to LECs to interconnect the public switched telephone network with their one-way paging networks. One-way paging networks are simply not capable of providing all the universal services necessary to become eligible for universal service support as defined by the Joint Board. Indeed, under the Joint Board's eligibility requirements, no CMRS provider (cellular, PCS, two-way paging) currently has the capability of providing all of the services defined as universal service. And, since paging carriers are not compensated for each call placed to a paging unit (unlike LECs), they will not even indirectly benefit from the universal service fund.

Since the Fourteenth Amendment prohibits the imposition of a tax where no benefits are returned, this "universal service" tax upon paging operators is simply unconstitutional. Hence, neither the FCC nor Congress can require one-way paging companies to pay universal service fees in violation of paging companies' Constitutional rights.

Section 254(d) of the Telecom Act expressly allows the Commission to "exempt a carrier or class of carriers" from contribution to the universal service fund "if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis." 47 U.S.C. § 254(d). Paging companies meet this statutory definition and should be deemed "exempt." In adopting this section of the Telecom Act, Congress apparently recognized the Constitutional rights of carriers who cannot technically obtain "eligible status," and therefore should be exempt from making contributions in violation of their rights. Since the Joint Board has defined "eligible" carriers in such a way as to exclude paging carriers, the statute would appear to mandate an exemption from payment obligations for paging carriers. This Joint Board should conclude as much in its ultimate findings.

IV. Section 332 of the Act Preempts States From Requiring CMRS Providers to Contribute to Universal Service.

Section 332(c)(3)(A) of the Act provides, in pertinent part, that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or private mobile service[.]" See 47 U.S.C. § 332(c)(3)(A). The statute permits States to regulate "other terms and conditions" of CMRS, and provides that CMRS providers are not exempt from State universal service requirements "where [CMRS]

services are a substitute for land line telephone exchange service for a substantial portion of communications within such State". Id. The Act also permits States to petition the FCC for authority to regulate CMRS rates, id.; and allowed States which had rate regulations in effect on June 1, 1993 to petition the FCC no later than August 10, 1994 to extend that rate regulatory authority. See 47 U.S.C. § 332(c)(3)(B).

To date, no State has demonstrated that any CMRS is a substitute for landline service in a substantial portion of a State. Therefore, no State can inflict universal service obligations on CMRS providers. The Joint Board ought to clearly state this conclusion in its ultimate findings.

In addition, the Commission has noted that Section 332(c)(3)(A) wholly displaces State regulation of CMRS entry and rates. See In the Matter of Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, 10 FCC Rcd. 7842 (May 19, 1995). In ruling on various State petitions to continue regulating CMRS rates, the Commission has concluded that Section 332(c)(3) "express[es] an unambiguous congressional intent to foreclose state regulation in the first instance." See In the Matter of Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order in PR Docket No. 94-106, FCC 95-199, ¶ 8 (released May 19, 1996) ("Connecticut CMRS Order"), aff'd. sub nom, Connecticut Department of Public Utility Control v. FCC, 78 F.3d 842 (2nd Cir. 1996).

The Commission also found that the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), which amended the Act in a number of significant respects including the

addition of Section 332(c)(3), "reflects a general preference in favor of reliance on market forces rather than regulation." Id.

State imposition of universal service fees on CMRS providers will inflict unlawful entry and rate barriers on CMRS operators, in violation of these FCC findings and Congress' statutory edicts. The Joint Board's decision that States can require CMRS providers to contribute to a universal service fund improperly invalidates these findings and statutes for two reasons. First, the universal service fees will impose a substantial cost on CMRS provision of service that the carriers would have to recover in their rate base. By prescribing one of the components of CMRS carrier rates, States would be engaging in unlawful rate regulation. Second, the additional universal service fees will erect formidable barriers to entry for CMRS operators, particularly since most CMRS operators today operate at barely break-even operating margins, or worse. Consequently, these Joint Board findings violate Section 332(c)(3) of the Act, and the FCC's previous policy conclusions; they should be eliminated or revised in the Joint Board's ultimate conclusions.

V. If CMRS Providers Are Compelled to Contribute, Constitutional Fairness Requires That it be on a Weighted Basis.

The Telecom Act fundamentally changes telecommunications regulation by replacing the historic model of government-encouraged monopolies, with one in which federal and state governments jointly promote efficient competition and remove outdated regulations that protect monopolies. See, Recommended Decision at ¶ 1, citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 at ¶ 5. Under these goals, the Joint Board recommends that contributions to universal service support

mechanisms should be based on competitive neutrality which is defined as applying universal service support mechanisms and rules in "a competitively neutral manner." Recommended Decision at ¶ 23.

Celpage supports the proposal of competitive neutrality; but does not see that objective reflected in the Joint Board's findings. A competitively neutral system of implementing universal service must take into consideration all the factors that affect a company's competitive environment, and would seek to ensure that one company is not competitively and economically burdened more than another.

Unlike the market in which the LECs operate, the paging industry currently operates in a fiercely competitive market. Most paging companies, unlike LECs or even interexchange carriers, have never had protected monopoly service areas and guaranteed rates of return. Rather, with hundreds of paging frequencies available in every U.S. market, barriers to entry have historically been extremely low, and competition for paging customers has been intense.[3] Because of this competition, the paging industry is very "price sensitive" to the rates customers are willing to pay for paging services. Since the industry is operating at market capacity, any increase in a carrier's rates will cause customer movement to a competitor's service. Therefore, forcing paging providers to contribute to a fund whose payments they are not eligible to receive, not only places unconstitutional and illegal burdens on paging companies, it also places unfair and unreasonable strains on the paging market, hinders growth and competition, and imposes financial hardship and competitive inequality on this sector of the communications industry.

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[3]The FCC has historically examined paging market competition based on the number of available paging frequencies. See, e.g., James F. Rill (Communications Industries-Pactel), 60 Rad. Reg.2d. 583, 602 (1986).

If, nevertheless, this Joint Board compels paging companies to pay universal service fees, at best, paging providers should not have to pay at the same rate as LECs; rather, CMRS contributions should be on a weighted basis. The FCC should implement a reduced payment schedule for messaging providers based on a policy of fairness and competitive neutrality, because: they are not currently eligible to receive universal service support funds, they do not have a large, stable customer base, and, their profit margins are not nearly at the same level as LECs or other eligible carriers. Celpage will surely be adversely affected if the Commission requires one-way paging companies to contribute at the same rate as LECs.

Celpage requests that the FCC adopt rules that will ensure equitable and fair contributions toward universal service from all eligible telecommunications providers. Surely, the competitive neutrality contemplated by the Joint Board could not have meant that paging companies would have to subsidize LEC giants, which still operate as protected monopolies and are the only ones positioned to immediately benefit from the support mechanisms. The FCC should take into consideration the limited technical capacity, smaller revenue base, and market driven nature of the CMRS industry to find that paging companies cannot be equated with LECs for purposes of universal service payments. Therefore, CMRS providers should contribute on a weighted basis. To require paging companies to contribute at the same rate as the subsidized LECs is not competitively neutral, equitable or Constitutional.

VI. Paging Companies' Contributions, if any, Should be Based on a Percentage of Net Income, not Gross Revenue.

If the FCC determines that paging companies must pay universal service fees, the contribution should be based on a percentage of net income, not gross revenue. Celpage, as is

the case with most paging companies, has expended millions of dollars to build its network. These costs include purchases of radio transmitters, radio antennas, and satellite or radio links to connect the transmitters together, paging terminals, service stations, and sales and operations facilities. There are also enormous recurring monthly expenses necessary to maintain and operate a paging network. For example, the transmitters and their associated radio antennas must be located at the highest possible locations to achieve optimum radio signal coverage. Consequently, many paging companies rent tower space at locations known for signal propagation capabilities; each of which can cost over $1000 a month.[4] There are also substantial monthly expenses for sales, service, billing, customer assistance, operator assistance, and management operations. Celpage did not generate the money to cover these costs from government-protected rates of return and monopoly pricing practices, unlike the LECs.

Because of these high costs, recurring expenses, and fierce competition from numerous CMRS carriers in every major market, the majority of the paging companies today currently operate at a loss. Indeed, virtually all of the Nation's ten largest paging companies operate at a loss on an annual basis. Because of this highly competitive environment, paging companies will not be able to pass additional costs from universal service fees to their customers.[5] To require paging companies, few of which are operating at a profit, to pay universal service fees based on

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[4]Figure based on Celpage's costs.

[5]Commissioner Chong's statement accompanying the Recommended Decision suggests that companies will pass the additional costs from universal service fees to their customers. This assumption may be true for LECs and IXCs, but not for paging companies. Price-sensitive paging customers that leave one $7 per month paging carrier to save 50 cents on their bills, are unlikely to stay with a paging carrier if that carrier tries to add these universal service fees to their bills.

gross revenue may cause many paging companies, especially start-up companies, to go bankrupt or to sell their business, since it is impossible to continue operating if expenses consistently outweigh profits. Consequently, the Joint Board's recommendations are bound to eliminate, rather than foster, the competitive growth of the paging industry. Unlike the LECs who have been operating at a profit for several decades due to government protections, paging company profits are strictly tied to economic forces.

Under the Telecom Act, the FCC has a duty to ensure that competition remains viable by eliminating anti-competitive regulations. See, 47 U.S.C. § 402. The FCC, therefore, cannot impose the Joint Board's recommendation of gross revenue-based contributions against CMRS carriers since it will have a devastating impact on CMRS competition. Paging carrier contributions based on net income, not gross revenue, would be far more equitable since that would allow paging companies to subtract expenses to reflect profits to better meet the demands of a competitive market.

VII. The Joint Board Cannot Tax the Same Income Twice.

The Joint Board proposes that payments should be based on both interstate and intrastate revenues; however, there are no provisions for a credit for payments made to State universal service funds. Thus, carriers will be taxed twice on the same revenues. At the very minimum, the Joint Board should exclude intrastate revenues from its formula in those instances where carriers will be paying to a State fund based on the same revenues. In the alternative, as in the U.S. Tax Code, carriers should receive full credit for payments made to state funds.

The Joint Board did not make a recommendation as to how the duplicative roles of

Federal and State universal service mechanisms are to be resolved. Recommended Decision at ¶ 822. Pursuant to Section 254(f) of the Telecom Act, a State may not adopt its own universal service regulations that are "inconsistent with" or that "burden" federal universal service rules. See 47 U.S.C. § 254(f). Any State universal service program that imposes a tax upon paging companies without taking into consideration and making a provision for Federal contributions, would burden Federal support mechanisms in violation of the Telecom Act, by causing severe economic hardship and decline in competition for paging companies, and impeding their ability to contribute to the Federal universal service program.

Therefore, the FCC has a responsibility to ensure that any State universal service proposal will not subject paging licensees to "double billing," and to ensure that paging carriers will not be subject to both Federal and State contribution requirements assessed on the same revenue basis. It would be inequitable and inconsistent with the Telecom Act to force paging companies to make payments to Federal support programs, and to also have to pay for State supported programs on the same revenue basis. Paging companies simply do not have the financial wherewithal to make these unfair double payments.

VIII. The Model Adopted for Federal Universal Service Payments will Impact State Universal Programs

The FCC's decision on how universal service payments will be calculated is particularly important since it will have a direct impact on how state universal service programs are implemented. For example, the Puerto Rico Telecommunications Board plans to establish a

universal service payment mechanism that will be similar to the FCC's.[6] This State fee would be in addition to the Federal fund requirement. Any inequities in the Federal universal service calculations will simply be compounded throughout the many states and commonwealths that will emulate the Federal model. Consequently, the Joint Board must ensure that the inequities highlighted in these Comments are thoroughly resolved prior to reaching its ultimate conclusions.

CONCLUSION

Virtually every aspect of the Joint Board's recommendations underscores the inherent inequities CMRS operators will face as "ineligible" carriers. For example, the Joint Board's discussions and recommendations for high cost support in the calculation of cost, Recommended Decision, at ¶ 183, determination of level support benchmarks, Recommended Decision, at ¶ 299, and competitive bidding, Recommended Decision, at ¶ 318, are entirely academic for CMRS operators. CMRS operators will not be able participate in universal service "bidding," regardless of the mechanisms ultimately adopted, since they cannot provide all the requisite universal services.

For all these and the foregoing reasons, Celpage respectfully requests that the Joint Board and the FCC honor paging companies' Constitutional rights by declaring that CMRS providers are an exempt group of carriers; at least until such time as CMRS providers will be technically able to benefit from the universal service support mechanisms. The FCC should also enforce Section 332(c)(3) of the Act and preempt State universal service regulations for CMRS until

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[6]See Exhibit One, attached hereto, PR Telecom Act § 6(a)(1).

such time as CMRS becomes a legitimate substitute for landline telephone exchange service. If, nonetheless, paging companies are forced to pay universal service fees, their contribution should be on a weighted basis. Furthermore, the Joint Board and the FCC should protect the competitiveness of the paging industry by basing the contributions on net income rather than gross revenues.

Respectfully submitted,
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Article for public inspection within ten (10) days following their approval. The Board may charge a reasonable, non-discriminatory charge on the parties to an agreement or on the party that files a statement to recover costs of approval and filing of such agreements or statements.

(i) Availability for other Telecommunication Companies. A local exchange carrier shall make available any interconnection, service or access to elements of the network available under an agreement approved within the scope of this Article to which it is a party, to any other telecommunication company that so requests, under the same terms and conditions as are provided in said agreement.

(j) Definition of Incumbent Local Exchange Carrier. For the purposes of this Article, the term "incumbent local exchange carrier" shall have the meaning set forth in clause (b) of Article 3, Chapter I hereof.

Article 6. - Universal Service.

(a) Principles of universal service.

(1) The Board shall preserve and promote universal service through predictable, specific, sufficient support mechanisms, pursuant to the provisions of Section 254 of the Federal Communication Act, and also, in accordance with the following principles:

(i) The goal of universal service is to provide telecommunication services of comparable quality to all segments of the citizenry and geographic areas of Puerto Rico.

(ii) Telecommunication services shall be available throughout Puerto Rico at fair and reasonable prices, which means that service tariffs in rural areas shall be reasonably comparable to prices in urban areas.

(iii) Advanced telecommunication services shall be available in all municipalities and communities, and also in all health service installations, libraries and public school classrooms in Puerto Rico.

(2) Every telecommunication company shall contribute to the preservation and development of universal service in Puerto Rico on an equitable, non-discriminatory basis, as established by the Board.

(3) The structure of the contribution mechanisms that the Board develops, implements and periodically reviews must be complementary to, but not duplicate the contribution mechanisms established at the federal level.

(4) Universal service must, at the minimum, include the following services,

without excluding other service, as the Board may provide under the scope of clause (c)(3) of this Article:

(i) access of every public switched telephone network with voice grade capability;

(ii) single party service;

(iii) free access to emergency services, including 911 emergency service; and

(iv) access to operator service.

(b) Determination of eligible telecommunication companies.

(1) The Board, at its own initiative or by petition, may designate a telecommunication company as an eligible telecommunication company to render universal service in one or more areas designated by the Board. By petition, and pursuant to public interest, need and convenience, the Board may designate more than one company as an eligible telecommunication company for a service area it establishes, provided each company fills the requirements of clause (b)(2) of this Article. For the purpose of making the corresponding designation, the Board shall take technological factors and the cost of providing service, among other factors. into consideration.

(2) In order for a telecommunication company to be designated as an eligible telecommunication company for receiving universal service program funds, within the entire service area for which it has been designated, it must:

(i) offer support services for the universal service program utilizing its own facilities or a combination of its own facilities and the resale of services of another telecommunication company; and

(ii) advertise the availability of such services and the charges for same through newspapers of general circulation.

(3) If a telecommunication company that receives universal service program funds does not wish or cannot provide service to a community or to a portion thereof, as it has been requested to do, the Board shall determine which telecommunication companies are in the best position to provide such service and shall order them to proceed correspondingly. Any telecommunication company that may be ordered to provide services under this clause must comply with the requirements of clause (b)(2) of this Article and shall be designated as an eligible

telecommunication company for such community or portion thereof.

(4) The Board, through its prior authorization, may permit an eligible telecommunication company to abandon its designation in any area served by more than one eligible telecommunication company. Prior to granting the authorization, the Board shall impose upon the remaining eligible telecommunication companies the obligation of assuring service to the users of the eligible telecommunication company that is withdrawing, and shall require sufficient notification to permit the purchase or construction of adequate installations by any other eligible telecommunication company. The costs and expenses incurred by the telecommunication companies in providing eligible services shall be reimbursed through the procedures of universal service support. The Board shall establish a time period, not to exceed a year following the approval of such withdrawal under this clause, to complete purchase or construction.

(c) Procedures of universal service.

(1) Within one hundred twenty (120) days following the constitution of the Board, it shall initiate a formal procedure for implementing the universal service support mechanisms throughout Puerto Rico. As part of this procedure, the Board shall take into consideration the report, if any, that has been filed by the Federal-State Joint Board created by virtue of Section 254 of the Federal Communications Act. This procedure shall include a period of notification and comments.

(2) As part of the procedure the Board shall determine:

(i) the support mechanisms needed in the Puerto Rico jurisdiction for expanding or maintaining universal service. The decision to this effect shall be made by a majority of the Board members if the favored mechanism(s) figure among those already utilized in any area under the jurisdictions governed by the Federal Communications Act, or are found among those that were under consideration of the Federal Communications Commission or have been implemented in the various States of the United States of America. The decision to implement any other support mechanism shall require the unanimous vote of the Board members.

(ii) that if it decides that one of the support mechanisms must be the constitution of a fund to underwrite universal service throughout Puerto Rico, its yearly amount shall be equal to the difference between the costs of providing eligible services and the maximum prices that may be charged for same;

(iii) the manner in which the sums contributed through the support

mechanisms to the Universal Service Fund throughout Puerto Rico shall be distributed between the eligible telecommunication companies; and

(iv) the manner in which any other support mechanism throughout Puerto Rico should be established, administered and controlled.

(3) The services to be underwritten by the universal service program in Puerto Rico shall include those services needed to meet particular necessities throughout Puerto Rico, as the Board may establish. In determining the services that shall be included in the definition of universal service, the Board shall consider the recommendations, if any, made by the Federal-State Joint Board established by Section 254(a) of the Federal Communications Act, as well as those services implemented by the various states of the United States of America in their universal service programs.

(4) All telecommunication companies shall contribute to the Universal Service Fund in an equitable, non-discriminatory fashion.

(5) The obligation to contribute to the Universal Service Fund shall commence on the date on which the telecommunication company commences rendering telecommunication services in Puerto Rico and generating income by reason thereof, pursuant to Section 254(f) of the Federal Communications Act.

(6) The Board shall have one hundred eighty (180) days following the date of its constitution to complete the formal procedure provided for the provisions of clause (c)(1) of this Article and to implement universal service. If, after one hundred eighty (180) days, the Board has not fixed the amount to be contributed by the telecommunication companies, it shall on that date fix a provisional contribution to be paid by each telecommunication company until the required amount is finally determined. The amount fixed as a provisional contribution shall be applied retroactively to the effective date hereof, and shall be paid from then on until the Board modifies or replaces it through final, signed and unappealable decision, which must be adopted within the ninety (90) days following the date on which the provisional contribution was fixed. Said amount shall be paid for the first time by every telecommunication company within fifteen (15) days following the date on which the amount is fixed, and from then on, quarterly or as the Board may provide by regulation. Said amounts shall be paid by check, electronic transfer or any other method the Board may provide by regulation.

(7) Once a final determination is adopted regarding the mechanism of

contribution to universal service, the Board shall establish those necessary mechanisms for crediting the sums paid in excess or collecting deficiencies in payments made prior to the date on which said final determination is adopted.

(8) The sums of money contributed by telecommunication companies to the Universal Service Fund through the support mechanisms established by the Board shall be covered into a special account in the Government Development Bank. Said Fund shall be exclusively utilized to help provide, maintain and improve the services in support of which the Fund is created.

(9) Within a year following the constitution of the Board, it shall designate an independent administrator through a bidding process, to administer the sums deposited in the Universal Service account and to supervise their disbursement to eligible telecommunication companies. The entire process of collection, administration, disbursement and use of said monies shall be subject to audits by the Comptroller of Puerto Rico.

(10) The Board shall annually review the total obligation that each telecommunication company has with the Universal Service Fund and in fixing same, it shall take into consideration the recommendations, if any, of the administrator. The decisions that the Board adopted to these effects shall be based on two principal factors:

(i) public interest in expanding and maintaining a modern telecommunication system that is within the grasp of all geographic and social sectors of Puerto Rico, and

(ii) the need of ensure that the criteria utilized in establishing the contribution to the Fund by the companies are viable and uniformly and equitably applied and are neither arbitrary nor discriminatory.

(11) The funds obtained through the mechanism of contributing to the universal service must be used in an efficient manner in order to facilitate the offer of high quality services at the best possible price.

Article 7. - Information on Prices and Charges

(a) Every telecommunication company must submit to the Board a listing of its prices and charges and every time it makes a change to them, it must submit them [to the Board] simultaneously with their implementation in the market.

(b) The Board, at the request of an interested party and by means of a complaint, may evaluate whether the established prices and/or charges are not based on their cost, thus being in

CERTIFICATE OF SERVICE

I, Regina Wingfield, a secretary with the law firm of Joyce & Jacobs, Attys. at Law, LLP, hereby certify that on this 19th day of December, 1996, copies of the foregoing Comments of Celpage, Inc. were sent via first class U.S. mail, postage prepaid, to the following:

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